



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

IN THE MATTER OF:

**Ecology Control Industries,**

**Mr. Ronald Flury,**

**and**

**Montrose Chemical Corp. of California,**

## Respondents

Proceeding Under Section 106(a)  
of the Comprehensive Environmental  
Response, Compensation, and  
Liability Act of 1980,  
42 U.S.C. § 9606(a).

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) UNILATERAL ADMINISTRATIVE  
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) ORDER FOR THE PERFORMANCE  
)  
) OF A REMOVAL ACTION  
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) U.S. EPA REGION 9  
) CERCLA DOCKET No. 9-2006-02A  
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2. This amended Unilateral Administrative Order ("Order") is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, and the Small Business Liability Relief and Brownfields Revitalization Act of 2002 ("CERCLA"). The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. This authority has been duly redelegated to the Branch Chief, Superfund Division, EPA Region 9 ("Branch Chief"), by delegations dated September 29, 1997, and November 16, 2001.

## II. PARTIES BOUND

3. This Order shall apply to and be binding on Respondents Ecology Control Industries, Inc., Mr. Ronald J. Flury, and Montrose Chemical Corporation of California, Inc. This Order shall be binding on Respondents and any agents, officers, employees, successors and assigns thereof. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

4. No change in ownership or operational status will alter a Respondent's obligations under this Order.

5. Notwithstanding the terms of any contract or agreement, Respondents are responsible for compliance with this Order and for ensuring that all employees, contractors, and agents comply with this Order. Respondents shall provide a copy of this Order to all contractors, subcontractors, and consultants that are retained by them to perform the Work required by this Order within three (3) working days after the Effective Date of this Order or within three (3) working days of retaining their services, whichever is later.

6. Respondents may not convey any title, easement, or other interest that they may have in the Property, without a provision permitting the continuous implementation of the provisions of this Order. If Respondents wish to transfer any title, easement, or other interest that they may have in the Property, Respondents shall provide a copy of this Order to any subsequent owner(s) or successor(s) before any ownership rights are transferred. In such case, Respondents shall advise EPA as soon as practical prior to any anticipated transfer of interest.

### III. DEFINITIONS

7. Unless otherwise expressly provided herein, the terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Order, or in the exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

“Days” shall mean consecutive calendar days unless expressly stated otherwise.

“Working days” shall mean consecutive calendar days other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 and by the Small Business Liability Relief and Brownfields Revitalization Act of 2002, 42 U.S.C. § 9601 et seq.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

“Paragraph” shall mean a portion of this Order identified by an Arabic numeral.

“Property” shall mean that real property located at 20846 Normandie Avenue, Los Angeles County, California. The Property consists of the following parcels: Los Angeles County

1 Tax Assessor Parcel Numbers 7348-020-003, 7348-020-004, 7348-020-007 and 7348-020-008.

2 "Removal Action Memorandum" or "Action Memorandum" shall mean the EPA  
3 Region 9 Superfund decision document, dated November 2, 2005 and signed by Elizabeth J.  
4 Adams which selected CERCLA response actions for soil piles and excavations at the Property.  
5 The Removal Action Memorandum is included in this Order as Attachment A.

6 "Response Actions" or "Removal Actions" shall be those specific Work items or  
7 tasks which Respondents are required to perform pursuant to this Order, including but not limited  
8 to, the Work items or tasks set out in Section IX of this Order.

9 "Section" shall mean a portion of this Order identified by a Roman numeral,  
10 unless otherwise stated.

11 "State" shall mean the state of California, and all of its political subdivisions,  
12 including but not limited to the Department of Toxic Substances Control ("DTSC").

13 "Unilateral Order" or "Order" shall mean this amended Unilateral Administrative  
14 Order, EPA docket number 9-2006-02A, and any exhibits or attachments hereto.

15 "United States" shall mean the United States of America.

16 "Work" shall mean those response actions required of Respondents by this Order  
17 and including, but not limited to, those response actions set forth in the EPA Region 9 CERCLA  
18 Removal Action Memorandum (dated November 2, 2005). A copy of the Removal Action  
19 Memorandum is included as Attachment A to this Order.

1                                    **IV.     FINDINGS OF FACT**

2                    8.     Montrose Chemical Corporation of California, Inc. ("Montrose") manufactured the  
3     pesticide dichlorodiphenyl-trichloroethane (DDT) at 20201 Normandie Avenue, Los Angeles  
4     County, California ("the Montrose Plant Property") from 1947 until the summer of 1982.  
5     Montrose also conducted DDT grinding and DDT formulation activities at the Montrose Plant  
6     Property. The Montrose Plant Property was the only location in California where technical grade  
7     DDT was produced. The Montrose Plant Property was the only location in the Torrance,  
8     California area where DDT grinding and DDT formulation were conducted.

9                    9.     During Montrose's operations at the Montrose Plant Property, DDT and other  
10    hazardous substances, including but not limited to monochlorobenzene, were released into the  
11    environment at and from the Montrose Plant Property.

12                  10.    EPA has determined that DDT is a probable human carcinogen. DDT also exhibits  
13    non-cancer toxicity in the liver and nervous system. DDT is toxic to aquatic life and can cause  
14    reproductive failure in birds.

15                  11.    During the period of Montrose's operations at the Montrose Plant Property, the  
16    Montrose Plant Property was owned by Stauffer Chemical Company.

17                  12.    From at least 1954 until 1963, Stauffer Chemical Company owned and operated a  
18    plant that produced technical grade benzene hexachloride ("BHC") and lindane ("gamma BHC")  
19    at the Montrose Plant Property. The Stauffer BHC/lindane operations were the only such  
20    operations in the Torrance area.

21                  13.    BHC occurs as a number of isomers including alpha-BHC, beta-BHC and gamma-  
22    BHC.

1           14. Lindane is produced by isolating the gamma-BHC isomer from the other BHC  
2 isomers present in technical grade BHC.

3           15. EPA has determined that alpha-BHC and technical grade BHC are probable human  
4 carcinogens.

5           16. EPA has determined that beta-BHC is a possible human carcinogen.

6           17. EPA has determined that exposure to gamma-BHC can result in liver and kidney  
7 toxicity.

8           18. EPA has determined that PCBs and chlordane are probable human carcinogens.

9           19. From information presently available to EPA, EPA does not believe that the PCBs  
10 and chlordane found in soil samples from the 20846 Normandie Avenue Property originated with  
11 releases from the Montrose Plant Property.

12           20. EPA placed the Montrose Chemical Superfund Site on the CERCLA National  
13 Priorities List in 1989.

14           21. Since the beginning of Montrose operations at the Montrose Plant Property until  
15 the early 1970's, a historical stormwater pathway existed that originated at the Montrose Plant  
16 Property. Stormwater runoff from the Montrose Plant Property flowed into a drainage ditch  
17 south of the Montrose Plant Property along Normandie Avenue. The stormwater pathway  
18 continued under Normandie Avenue and along a portion of 204<sup>th</sup> Street and then along the west  
19 side of Kenwood Avenue to Torrance Boulevard via an unimproved drainage ditch ("the  
20 Kenwood Ditch"). The stormwater pathway continued under Torrance Boulevard, through the  
21 eastern portion of the 20846 Normandie Avenue Property (as well as through portions of adjacent  
22 residential properties), and beyond.

1           22. In the late 1960's and early 1970's, Los Angeles County installed a stormdrain  
2 ("Project 685") to convey stormwater replacing a portion of the historical stormwater pathway  
3 (including the Kenwood Ditch and the portion of the historical stormwater pathway at the 20846  
4 Normandie Avenue Property).

5           23. Prior to 1955, process wastewater (containing DDT) from DDT manufacturing  
6 operations at the Montrose Plant Property would occasionally be released from the Montrose  
7 Plant Property. In February 1953, City of Los Angeles officials discovered ponded process  
8 wastewater from the Montrose Plant Property at the corner of 204<sup>th</sup> Street and Kenwood Avenue.

9           24. DDT and isomers of BHC at the Montrose Plant Property were also periodically  
10 carried into and down the historical stormwater pathway with rainwater.

11           25. Concentrations of total DDT in soil at the Montrose Plant Property are present at  
12 levels in excess of 24,000 parts per million ("ppm"). DDT is also present at the Montrose Plant  
13 Property at levels (up to 710,000 ppm) consistent with the presence of spilled or discarded  
14 product, intermediates or off-specification technical or formulated DDT.

15           26. The maximum concentration, reported in the 1998 Remedial Investigation Report,  
16 of total DDT in soil in the Normandie Avenue ditch south of the Montrose Plant Property is  
17 8,600 ppm.

18           27. Maximum concentrations of total DDT were above 17 ppm (exposure point  
19 concentration corresponding to a  $10^{-5}$  excess lifetime cancer risk) at 16 residential properties in  
20 the historical stormwater pathway along 204<sup>th</sup> Street and Kenwood Avenue and were above 170  
21 ppm DDT (exposure point concentration corresponding to a  $10^{-4}$  excess lifetime cancer risk) at  
22 six of those properties. At three residential properties, a depositional white layer was discovered  
23 containing up to 10% DDT by weight. The soil containing these DDT levels was removed by



1 EPA as part of the Kenwood Avenue Removal Action.

2 28. EPA has previously determined that the regional background DDT concentrations  
3 in Los Angeles County averaged between 1 and 3 ppm DDT, and ranged up to 10 ppm.

4 29. The 20846 Normandie Avenue Property occupies approximately 7.7 acres and is  
5 located southeast of the Montrose Plant Property along Normandie Avenue. The Property is  
6 zoned commercial.

7 30. Seven residential properties are located along or proximate to the eastern boundary  
8 of the 20846 Normandie Avenue Property. The 20846 Normandie Avenue Property is separated  
9 from the residential properties by a chain link fence with slats (northern portion) and a cinder  
10 block fence (southern portion).

11 31. The 20846 Normandie Avenue Property is occupied by Ecology Control Industries,  
12 Inc. ("ECI"), a registered hazardous waste transporter. ECI conducts operations at the Property  
13 as part of its business as a hazardous waste transporter.

14 32. Ecology Control Industries, Inc. is owned by Mr. Ronald J. Flury.

15 33. The 20846 Normandie Avenue Property is owned by Mr. Ronald J. Flury.

16 34. The historical stormwater pathway passed through the eastern portion of the 20846  
17 Normandie Avenue Property and portions of the adjacent residential properties.

18 35. Soil sampling was conducted, in 2005, at the 20846 Normandie Avenue Property as  
19 part of site assessment activities commissioned by the Property owner, Mr. Flury.

20 36. The maximum concentration of total DDT found in sampling conducted in 2005 by  
21 Mr. Flury at the 20846 Normandie Avenue Property was 325 ppm. The sample was taken in the  
22 area of the 20846 Normandie Avenue Property where the historical stormwater pathway was  
23 located.

1           37. The upper range of the regional background DDT concentration, 10 ppm, was  
2 exceeded in 13 percent of the samples collected at the 20846 Normandie Avenue Property in  
3 2005; all samples exceeding 10 ppm were collected from the Property in the area of the historical  
4 stormwater pathway. These soil sample results also exceed the State of California hazardous  
5 waste toxicity characteristic level for DDT of 1 ppm.

6           38. Alpha-BHC and beta-BHC isomers are present in soil at the Montrose Plant  
7 Property. Alpha-BHC and beta-BHC have also been detected in the historical stormwater  
8 pathway, including the Normandie Avenue ditch south of the Montrose Plant Property and along  
9 the west side of Kenwood Avenue.

10          39. Isomers of BHC were also detected in soil samples collected in the area of the  
11 historical stormwater pathway at the 20846 Normandie Avenue Property. In addition, chlordane,  
12 PCBs and total petroleum hydrocarbons were detected in soil samples from this area. The  
13 maximum reported soil sample result for chlordane (4.45 ppm) exceeds the State of California  
14 hazardous waste toxicity characteristic level for chlordane of 2.5 ppm.

15          40. At the direction of Mr. Flury, Ecology Control Industries excavated contaminated  
16 soil found at 20846 Normandie Avenue Property primarily from the area where the historical  
17 stormwater pathway was located. An estimated 3,000 cubic yards of soil were removed by ECI  
18 between March and early June of 2005, from five excavation areas.

19          41. In early June of 2005 and prior to EPA's first conference call with Mr. Flury on  
20 June 13, ECI transported a total of 512 tons of the excavated soil to American Remedial  
21 Technologies in Lynwood, California. American Remedial Technologies does not have a permit  
22 from the State of California to accept hazardous waste. The ultimate disposition of the soil has  
23 not been confirmed by EPA.

1           42. EPA became aware of soil sampling activities and DDT contamination at the 20846  
2 Normandie Avenue Property in late May and early June 2005 through telephone conversations  
3 with Mr. Flury's consultants who had contacted EPA for information.

4           43. A conference call was held on June 13, 2005 with EPA, the Property owner,  
5 counsel for the Property owner and a consultant to the Property owner. During that call, EPA  
6 learned that soil had been previously transported to American Remedial Technologies. EPA  
7 requested that the Property owner stop all excavation activities and any related offsite  
8 transportation/disposal. EPA requested that all excavated soil at the Property be securely covered  
9 in order to prevent or limit any wind-driven dust releases. EPA also requested all information  
10 regarding the soil sampling and excavation activities, and subsequently issued a request for that  
11 information pursuant to Section 104(e) of CERCLA, 42 U.S.C. Section 9604(e).

12           44. Excavated soil is located in four piles on the eastern portion of the 20846  
13 Normandie Avenue Property. The soil piles are as close as fifteen (15) feet from residential  
14 properties; these residential properties are currently occupied and children reside at some of these  
15 residential properties. These residential properties are located downwind of the excavated soil,  
16 given the prevailing wind direction in the area.

17           45. There are five open excavations all in the eastern portion of the Property. These  
18 excavations are as close as five (5) feet from the property line with the residential properties. No  
19 efforts to prevent fugitive dust emissions from the open excavations have been undertaken by the  
20 owner despite EPA requests to do so.

21           46. On June 27, 2005, counsel for Mr. Flury confirmed by letter that the piles of  
22 excavated soil had been covered. However, during a visit to the Property on June 29, 2005, EPA  
23 contractors found that one of the excavated soil piles was not covered and another was only

1 partially covered. On July 8, 2005, counsel for Mr. Flury confirmed that the soil piles had been  
2 covered. Following an EPA visit to the Property on July 19, 2005, EPA requested, in a July 25,  
3 2005 letter, that additional efforts be undertaken by the Property owner to monitor and maintain  
4 the covers on the soil piles and to take actions to prevent fugitive dust emissions from the open  
5 excavations.

6 47. In July 2005, EPA concluded that hazardous substances (DDT and isomers of  
7 BHC) historically released from the Montrose Plant Property into the historical stormwater  
8 pathway have come to be located on the 20846 Normandie Avenue Property. EPA extended its  
9 remedial investigation of the Montrose Superfund Site historical stormwater pathway to include  
10 the Property.

11 48. The soil piles and excavations are located in the lowest-lying portion of the  
12 Property. The Property has been previously graded and improved to direct stormwater from the  
13 bulk of the Property to the eastern area where a storm grate receives and directs stormwater into  
14 the Los Angeles County Project 685 stormdrain (a subsurface concrete drain traversing the  
15 Property along the eastern border of the Property). The Project 685 stormdrain empties into the  
16 Torrance Lateral then into the Dominguez Channel which empties into the Consolidated Slip in  
17 the Los Angeles Harbor.

18 49. During storm events, contaminated soil (containing hazardous substances) from the  
19 soil piles could be released to adjacent residential properties via stormwater sheet flow or  
20 released into the Los Angeles County Project 685 stormdrain, potentially impacting ecological  
21 receptors in Dominguez Channel and Consolidated Slip. In addition, fugitive dust releases may  
22 occur as the result of inadequate or ineffective efforts to keep the soil piles covered or to keep  
23 soil from the walls of the open excavation secured.

1           50. Of the soil samples taken from the area of the historical stormwater pathway at the  
2 20846 Normandie Avenue Property, the maximum DDT concentration was 325 ppm. Thirteen  
3 percent (13%) of sample concentrations exceeded the upper range of regional DDT background  
4 concentrations (10 ppm).

5           51. Eighteen (18) samples taken from the area of the historical stormwater pathway at  
6 the 20846 Normandie Avenue Property (primarily from two excavations, SB-05 and SB-20 both  
7 of which are within twenty feet of adjacent residential properties) had DDT concentrations  
8 exceeding 17 ppm, which corresponds to a  $10^{-5}$  excess cancer risk for lifetime residential  
9 exposure.

10          52. Six (6) samples taken from the area of the historical stormwater pathway at the  
11 20846 Normandie Avenue Property had DDT concentrations exceeding the concentration  
12 corresponding to the noncancer Hazard Index of 1 for a residential exposure scenario (35 ppm).  
13 These samples were collected from two to five feet below ground surface in the areas of SB-05  
14 and SB-20 adjacent to the fence line separating the Property from residential properties.

15          53. Despite requests from EPA, the Respondents have failed to undertake voluntary  
16 efforts to address the excavated soil piles and backfill the open excavations.

17          54. On November 2, 2005, EPA issued a CERCLA Removal Action Memorandum  
18 selecting response actions to address the soil piles and open excavations at the Property. Copies  
19 of the Action Memorandum were provided to Respondents on November 3, 2005. Copies of the  
20 Administrative Record supporting the removal actions selected in the Action Memorandum were  
21 provided to the Respondents as an enclosure to EPA correspondence to the Respondents dated  
22 November 14, 2005.

1           55.     On November 3, 2005, EPA requested that Montrose, ECI and Mr. Flury provide  
2     Notices of Intent to conduct the response actions selected in the November 2, 2005 Removal  
3     Action Memorandum. The Notices of Intent were due to EPA on November 7, 2005. Montrose  
4     requested an extension of time to respond and, on November 9, 2005, Montrose in  
5     correspondence to EPA declined to provide a Notice of Intent to conduct the response actions.  
6     Mr. Flury and ECI have not provided a Notice of Intent.

7                               **V.     CONCLUSIONS OF LAW**

8     Based on the above Findings of Fact and the Administrative Record for the 20846 Normandie  
9     Avenue Removal Action, EPA has determined that:

10           56.    The Property is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C.  
11    Section 9601(9).

12           57.    The Montrose Plant Property is a facility as defined by Section 101(9) of CERCLA,  
13    42 U.S.C. Section 9601(9).

14           58.    DDT, DDE and DDD are “hazardous substances” as defined by section 101(14) of  
15    CERCLA, 42 U.S.C. Section 9601(14). Alpha-BHC, beta-BHC and gamma-BHC are all  
16    hazardous substances as defined by CERCLA Section 101(14). Chlordane is a “hazardous  
17    substance” as defined by CERCLA Section 101(14). Polychlorinated biphenyls (PCBs) are  
18    “hazardous substances” as defined by CERCLA Section 101(14).

19           59.    Respondent, Ecology Controls Industries, Inc. is a “person” as defined by Section  
20    101(21) of CERCLA, 42 U.S.C. Section 9601(21).

21           60.    Respondent, Ecology Control Industries, Inc., is liable, under Section 107(a)(1-3)  
22    of CERCLA, 42 U.S.C. Section 9607(a)(1-3), for all response costs incurred by the United States

1 with respect to the Removal Actions, including but not limited to costs related to the Work.

2 61. Respondent, Mr. Ronald J. Flury, is a “person” as defined by Section 101(21) of  
3 CERCLA, 42 U.S.C. Section 9601(21).

4 62. Respondent, Mr. Ronald J. Flury is liable, under Section 107(a)(1-3) of CERCLA,  
5 42 U.S.C. Section 9607(a)(1-3), for all response costs incurred by the United States with respect  
6 to the Removal Actions, including but not limited to costs related to the Work.

7 63. Respondent, Montrose Chemical Corporation of California, Inc., is a “person” as  
8 defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

9 64. Respondent, Montrose Chemical Corporation of California, Inc., is liable, under  
10 Section 107(a)(2) of CERCLA, 42 U.S.C. Section 9607(a)(2), for all response costs incurred by  
11 the United States with respect to the Removal Actions, including but not limited to costs related  
12 to the Work.

13 65. Respondents are jointly and severably liable under Section 107(a) of CERCLA, 42  
14 U.S.C. Section 9607(a), for all response costs incurred by the United States with respect to the  
15 Removal Actions, including but not limited to costs related to the Work.

16 66. Conditions at the Property, as described in the Findings of Fact above, constitute an  
17 actual or threatened “release” of hazardous substances from the facility as defined by Section  
18 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

19 67. Conditions at the Property as described in the Findings of Fact constitute or may  
20 constitute an imminent and substantial endangerment to public health, welfare or the  
21 environment.

22 68. The removal actions required by this Order are necessary to protect the public  
23 health, welfare or the environment and are not inconsistent with the National Contingency Plan,

1 40 C.F.R. Part 300, or CERCLA.

2 **VI. DETERMINATIONS**

3 Based on the Findings of Fact and the Conclusions of Law stated herein, EPA has made  
4 the following determinations:

5 69. That an actual or threatened release of hazardous substances from the Property  
6 may present an imminent and substantial endangerment to public health or welfare or the  
7 environment.

8 70. That conditions at the Property constitute a threat to public health or welfare or  
9 the environment based on consideration of the factors stated in the NCP at 40 C.F.R. §  
10 300.415(b), and that the actions required by this Order are necessary to protect public health or  
11 welfare or the environment.

12 71. That the actions required by this Order, if properly performed, will be consistent  
13 with the NCP, and are appropriate to protect the public health or welfare or the environment.

14 72. The excavated soil currently stored at the Property is classified as hazardous waste  
15 under California law. The excavated soil must be managed as hazardous waste within the State  
16 of California. If disposed of within California, the excavated soil must be managed consistent  
17 with California hazardous waste land disposal restrictions.

18 73. Disposal of the excavated soil must occur at an offsite facility meeting the  
19 requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. Section 9621(d)(3).



1                                   **VII. NOTICE TO THE STATE**

2           74.     Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA has notified  
3     the State of California of the issuance of this Order by providing a copy of this Order.

4                                   **VIII. EFFECTIVE DATE**

5           75.     This Order became effective on **December 1, 2005 (the "Effective Date")**.    The  
6     modifications to the Order are effective on the date that the amended Order is signed.

7                                   **IX. ORDER**

8           76.     Based on the Findings of Fact, Conclusions of Law, and Determinations, EPA  
9     hereby orders Respondents to perform the Work under the direction of the EPA On Scene  
10    Coordinator ("OSC"), as designated in Section XIV, and to comply with all requirements of this  
11    Order until EPA provides notice that the Response Action is complete.

12    A. Work to be Performed

13           77.     On November 2, 2005, the EPA Region 9, Site Cleanup Branch Chief, Superfund  
14     Division signed an Action Memorandum to implement a time-critical removal action involving  
15     the securing, hauling and off-site disposal of DDT contaminated soil in piles at the ECI Property,  
16     and backfilling and covering of open excavations. Respondents shall perform, at a minimum, the  
17     Work, including the following: a) arrange for the transportation of the excavated contaminated  
18     soil by a licenced hazardous waste transporter within 14 weeks of the Effective Date of this  
19     Order (the timeframe specified in EPA's Action Memorandum) or else secure such soil for  
20     scheduled disposal as described below; b) if disposed of in California, arrange for the treatment  
21     of the contaminated soil at a permitted hazardous waste treatment facility as required by

1 California hazardous waste treatment requirements and standards; c) arrange for the disposal of  
2 the excavated contaminated soil in accordance with the requirements of Paragraph 79 of this  
3 Order; and, d) arrange for the lining, backfilling with clean fill, and covering of excavated areas,  
4 in accordance with the schedule and implementation requirements of Paragraph 79 of this Order.  
5 The transportation, treatment (if in California or if required by the laws of the state in which the  
6 receiving facility is located), and disposal of the contaminated soil shall be conducted by  
7 Respondents in accordance with the requirements of this Order, and all applicable state and  
8 federal laws including but not limited to state laws concerning regulated hazardous waste.

9 78. Respondents shall immediately secure soil piles and excavations to prevent releases  
10 via surface water runoff or wind erosion, and maintain such until the soil piles are removed and  
11 the excavations are backfilled per this Order.

12 79. **On or before January 13, 2006**, Respondents shall submit to EPA for approval, a  
13 Work Plan or Work Plans for conducting the Work, as set forth in items A through L, below.  
14 The Work Plan shall provide a concise description of the activities to be conducted to implement  
15 the Work required by this Order, and shall include a proposed schedule for implementing and  
16 completing such activities. The Work Plan shall comply with the guidelines for preparation  
17 provided in Paragraph 80, below, and at a minimum shall require the Respondents to commence  
18 the removal activities set out below and in accordance with the schedule in the Work Plan as  
19 approved by EPA pursuant to Paragraphs 80 and 84 of this Order.

20 A) Manage soil in piles and from excavation walls to prevent release of fugitive dust  
21 by wind erosion. Perform air monitoring and sampling in accordance with  
22 Occupational Safety and Health Administration ("OSHA") regulations, South

1 Coast Air Quality Management District (“SCAQMD”) Rule 403 for Fugitive  
2 Dust, during any handling of soil including: maintaining daily records of  
3 activities and using best available control measures; implementing site controls  
4 and practices to limit the potential for and amounts of dust generation, such as  
5 covering exposed soil areas when not in active use, covering soil stockpiles;  
6 reducing vehicle speeds, and utilizing water sprays as necessary; as well as, use of  
7 wind screens around the work area at the down wind property boundary to prevent  
8 release of fugitive dust to adjacent properties. Additionally, monitor PM<sub>10</sub> levels  
9 at the upwind and downwind edges of key activities, but no farther than the  
10 property boundary, using daily real-time monitoring performed using a MIE  
11 dataRAM Model pDR-1000, or equivalent, to determine particulate  
12 concentrations. For each day of monitoring and at regular intervals during each  
13 day, compare the particulate data and implement dust control measures (e.g.,  
14 water spray, modification of work procedures, and/or suspension of work) in  
15 accordance with EPA-approved action levels, to be specified in the Work Plan. If  
16 such measures do not result in reductions to below the action levels, Rule 403  
17 contingency control measures will be implemented (despite non-qualification of  
18 this work as a “large operation”), including stopping work pending further  
19 evaluation of work practices and additional control measures. A dust control  
20 supervisor will be identified prior to the commencement of work, and will be  
21 responsible for implementing sufficient dust control and mitigation measures to  
22 ensure daily compliance with Rule 403 and additional requirements, as specified  
23 in this Order and the Work Plan.

1           B)     Prevent release from the Property via surface water runoff to the storm grate and  
2                Los Angeles county storm drainage system in accordance with the following  
3                measures, or alternative measures as proposed by Respondents in the Work Plan  
4                (and subject to EPA review and approval): berming at the storm grate and down-  
5                gradient Property boundary with absorbent/adsorbent booms; use of filtration  
6                devices (e.g., hay bails) to filter suspended sediments from stormwater; or,  
7                collection of surface water to prevent releases from the ECI Property, followed by  
8                sampling to determine appropriate disposal. Additionally, barriers (e.g., rubber  
9                storm drain mats) will be used during soil handling in dry weather to prevent  
10              releases of hazardous substances into the on-Property storm grate. Preventative  
11              and stabilization measures must be put into place prior to implementation of the  
12              approved Work Plan.

13          C)     Characterize soil for disposal, identifying all chemical compounds in such soil if  
14                required by the receiving facility or any state law. The Respondents shall provide  
15                to EPA a copy of the written inquiry, including full characterization of the soil,  
16                and written confirmation from the receiving facility confirming if the facility  
17                requires additional soil sampling for purposes of characterizing the acceptability  
18                of the soil for disposal at that facility. Respondents shall provide the above-  
19                mentioned correspondence to EPA prior to beginning transportation of the  
20                excavated soil to the receiving facility for disposal.

21          D)     Monitor air for fugitive dust during handling of soil containing hazardous  
22                substances including relocating, securing and loading soil for transport, and lining  
23                and backfilling of excavations, to prevent fugitive dust releases to the

environment, in accordance with SCAQMD Rule 403, and Item A, above.

- E) Transport excavated soil to an appropriate hazardous waste landfill permitted and approved for the disposal of hazardous wastes (Subtitle C facility). Soil hauling will be performed to remove all currently excavated soil from the ECI Property. No additional soil may be excavated at the ECI Property or in the vicinity of the historical stormwater pathway without prior EPA approval. Excavated soil will be loaded, covered and transported by truck in accordance with all applicable statutes and regulations, including SCAQMD Rule 403, and DTSC and Department of Transportation (DOT) requirements for hauling hazardous waste to a permitted hazardous waste facility. Furthermore, the hazardous waste facility where the soils are disposed of must meet the requirements of and be in compliance with the CERCLA Off-Site Policy, 42 U.S.C. Section 9621(d)(3) and implementing regulations, 40 C.F.R. Section 300.440. Transportation of all excavated soil must be completed at a rate to be specified in the Work Plan, but transportation of all excavated soil must be completed within 14 weeks of the effective date of the Order (the timeframe specified in EPA's Action Memorandum), or else the respondent's must propose an interim approach to secure all remaining excavated soil until transport, acceptable to EPA (e.g., securing soil in roll-off bins at the Property). Respondents may make such a proposal either in the Work Plan required by this Paragraph or in advance in a separate Work Plan. The movement of the excavated soil (e.g., into secure roll-off bins) must meet the requirements in this Paragraph to prevent releases during soil handling or storage. If Respondents' proposal to alternatively secure the

1 excavated soil (e.g., into secure roll-off bins) is approved by EPA, the schedule  
2 for the transportation of such secured soil to an off-Property disposal facility shall  
3 be extended from the period set out in the Removal Action Memorandum to six  
4 months from the Effective Date of this Order. However, all remaining excavated  
5 soil must be alternatively secured (e.g., moved into roll-off bins) no later than 14  
6 weeks following the Effective Date of this Order. Such alternatively secured soil  
7 must be transported off-Property to the disposal facility at a rate to be specified in  
8 the Work Plan.

- 9 F) Prevent releases to the environment during transportation, in accordance with  
10 SCAQMD Rule 403, DTSC and Department of Transportation (DOT)  
11 requirements for hauling hazardous waste to a permitted hazardous waste facility,  
12 and the Removal Action Memorandum. Each transfer of hazardous substances,  
13 pollutants or contaminants off-Property must be consistent with Section 121(d)(3)  
14 of CERCLA, 42 U.S.C. § 9621(d)(3), and the EPA procedures for planning and  
15 implementing off-Property Response Actions established at 40 C.F.R. § 300.440.
- 16 G) Identify a clean backfill source for filling excavations at the Property and provide  
17 EPA with documentation related to such backfill including, but not limited to  
18 analytical data and source. Backfill material must be pre-tested at a minimum for  
19 pesticides, volatile organics (VOCs), semi volatile organics (SVOCs), metals,  
20 polycyclic aromatic hydrocarbons (PAHs), and BTEX (benzene, toluene,  
21 ethylbenzene, and xylene) compounds. Imported soil will be obtained from an  
22 area which, based on knowledge of its history, is not located in a known industrial  
23 or agricultural area. Backfill material must meet EPA Region 9 Soil Preliminary

1 Remediation Goals (PRGs) for residential exposure, with respect to all  
2 contaminants tested, except for arsenic, which will meet a standard of 10 ppm (the  
3 value found by the Del Amo Superfund Site Human Health Risk Assessment to be  
4 the maximum background value for arsenic in local soils). Sampling results for  
5 the backfill material will be presented to EPA for review and approval prior to  
6 importing such soil for use. A proposed schedule for backfilling the excavations  
7 of greater duration than four (4) months from the Effective Date of the Order (as  
8 required in the Removal Action Memorandum) may be presented in the Work  
9 Plan required by this Order. However, the date for completion of the backfilling  
10 of the excavations in accordance with the requirements of this Order shall not  
11 extend beyond 6 months from the Effective Date of this Order, unless an  
12 extension of time to complete the required backfilling is approved by EPA. The  
13 Respondents should propose a method of stabilizing (e.g., shoring) the excavation  
14 walls (to be reviewed and approved by EPA) to ensure safe work practices  
15 including during handling of excavated soil next to the excavations and ingress  
16 and egress from the excavations during the period that the excavations remain  
17 open.

- 18 H) Line and then backfill open excavations using EPA-approved clean fill. Prior to  
19 backfilling, the excavations will be lined with a durable liner or geotextile to  
20 segregate ECI Property soil from clean backfill, unless EPA determines in  
21 advance that liners are no longer necessary and provides this determination in  
22 writing to the Respondents. Backfilling will be conducted in accordance with  
23 local, State and Federal requirements and any requirements to be provided by the

1 Los Angeles County Public Works Department for compaction and loading  
2 around the Project 685 box drain, which has been exposed by the on-Property  
3 excavations. Prevent any releases during lining and backfilling via wind erosion  
4 or surface water runoff. Perform air monitoring and sampling in accordance with  
5 OSHA regulations, and SCAQMD Rule 403 for Fugitive Dust, as described in  
6 Item A, above.

7 I). Cover, in accordance with the EPA-approved schedule, the backfilled excavations  
8 with asphalt or concrete in accordance with the approved Work Plan to prevent  
9 contaminant migration to areas of clean backfill.

10 J) Repair any damage to adjacent properties following completion of soil removal  
11 and excavation backfilling. Damaged property will be restored, reinstalled, or  
12 replaced in-kind if reinstallation is not possible. Items to be restored under this  
13 Order may include, but are not limited to features along the Property boundary  
14 with the residences, including: fencing, decorative walls, retaining walls,  
15 plantings, etc. Restorations will be conducted at a minimum to a level equal to  
16 the quality of the damaged items, and performed in accordance with current local  
17 building codes and requirements in effect at the time of the removal action.

18 K) Maintain the project Health and Safety Plan, meeting the requirements in  
19 Paragraph 80 and OSHA's criteria (29 C.F.R. § 1910.120), at the Property during  
20 all phases of the response;

21 L) Provide EPA with copies of all documentation related to off-Property disposal or  
22 other disposition of wastes including, but not limited to, manifests, waste profiles  
23 and analytical data and disposal costs.



1           80. The Work Plan required in Paragraph 79 shall be reviewed by EPA, which may  
2 approve, disapprove, require revisions, or directly modify the Work Plan as part of conditionally  
3 approving the Work Plan per Paragraph 84. Once approved, each element of the Work Plan shall  
4 be deemed to be incorporated into and made a fully enforceable part of this Order. The  
5 Respondents shall implement the Work Plan as finally approved by the EPA. In addition to the  
6 requirements listed in Paragraph 79, the Work Plan shall include a Health & Safety Plan,  
7 prepared in accordance with EPA's Superfund Standard Operating Safety Guide, dated June  
8 1992, which complies with all current OSHA regulations applicable to Hazardous Waste  
9 Operations and Emergency Response, 29 C.F.R. Part 1910. Respondents shall prepare the  
10 Health and Safety Plan as a separate document for EPA review. Respondents shall incorporate  
11 all changes to the Health & Safety Plan recommended by EPA and implement the Health &  
12 Safety Plan throughout the performance of the removal action.

13           81. **On or before January 13, 2006**, Respondents shall provide EPA with  
14 documentation that reasonably demonstrates their financial ability to complete the work to be  
15 performed pursuant to this Order. Examples of adequate financial documentation that EPA may  
16 accept include, but are not limited to, a signed contract with or guarantee on the part of the  
17 Respondents' contractor indicating that it will complete the work to be performed (including  
18 payment terms, such as whether the contract is pre-paid); an irrevocable letter of credit payable to  
19 EPA from a financial institution; a policy of insurance that provides EPA with acceptable rights  
20 as a beneficiary thereof; an escrow account for the value of the work to be performed; or a  
21 demonstration by the Respondents that they have adequate net worth and/or cash flow to pay for  
22 the work to be performed (which may include financial statements, auditors' reports, and the  
23 like).

1           82.     Respondents shall provide EPA with a written report on completion of the  
2     transportation of hazardous substances or wastes for treatment and disposal. This report must  
3     contain a summary of the activities performed to comply with this Order. Within fifteen (15)  
4     days after completing the Response Action, Respondents shall provide EPA with this final  
5     summary report, which also shall include all invoices submitted by contractors (which shall  
6     identify specific work performed), and copies of all analytical data generated during the response  
7     action.

8           83.     All documents, including technical reports, and other correspondence to be  
9     submitted by the Respondents pursuant to this Order, shall be sent by over-night mail to the  
10    following addressee or to such other addressees as EPA hereafter may designate in writing, and  
11    shall be deemed submitted on the date received by EPA:

12                   Susan Keydel, Remedial Project Manager

13                   Mailcode SFD 7-1

14                   U.S. EPA, Region 9

15                   75 Hawthorne Street

16                   San Francisco, CA 94105

17    Respondents shall submit three (3) copies of each document to EPA.

18           84.     EPA shall review, comment, and approve or disapprove each plan, report, or other  
19    deliverable submitted by Respondents. All EPA comments on draft deliverables shall be  
20    incorporated by the Respondents. Or, at the sole discretion of EPA, EPA may conditionally  
21    approve a deliverable in which case EPA's comments are deemed to be incorporated by reference  
22    into the deliverable (and are enforceable as part of that deliverable) but the Respondents need not  
23    revise the deliverable itself. EPA shall notify the Respondents in writing of EPA's approval,

1 conditional approval or disapproval of a deliverable. In the event of any disapproval, EPA shall  
2 specify the reasons for such disapproval, EPA's required modifications, and a time frame for  
3 submission of the revised report, document, or deliverable. If the modified report, document or  
4 deliverable is disapproved by EPA, EPA first shall notify the Respondents of its disapproval of  
5 the resubmitted report, document, or deliverable. EPA may elect to draft its own report,  
6 document or deliverable and incorporate it as part of this Order, may seek penalties from the  
7 Respondents for failing to comply with this Order, and may conduct the remaining work required  
8 by this Order and seek to recover costs from Respondents.

9 85. For purposes of this Order, EPA's authorized representatives shall include, but not  
10 be limited to, consultants and contractors hired by EPA to oversee the activities required by this  
11 Order.

12 B. Selection of Contractor(s) and Subcontractor(s)

13 86. All Work performed by or on behalf of Respondents pursuant to this Order shall  
14 be performed by qualified individuals or contractors with expertise in hazardous waste site  
15 investigation or remediation, unless agreed otherwise by EPA. **On or before January 13, 2006,**  
16 Respondents shall notify EPA in writing of the name, title and qualifications of the individual(s)  
17 who will be responsible for carrying out the terms of this Order, and the name(s) of any  
18 contractor(s) or subcontractor(s). The qualifications of the persons, contractors, and  
19 subcontractors undertaking the Work for Respondents shall be subject to EPA review and  
20 approval.

21 87. If EPA disapproves of any person's or contractor's technical or work-experience  
22 qualifications, EPA will notify the Respondents in writing. Respondents shall, within five (5)

1 working days of Respondent's receipt of EPA's written notice, notify EPA of the identity and  
2 qualifications of the replacement(s). Should EPA disapprove of the proposed replacement(s),  
3 Respondents shall be deemed to have failed to comply with the Order.

4 88. Respondents may propose to change the individual(s), contractor(s), or  
5 subcontractor(s) retained to direct and supervise the Work required by this Order. If  
6 Respondents wish to propose such a change, Respondents shall notify EPA, in advance and in  
7 writing, of the name, title, and qualifications of the proposed individual(s), proposed  
8 contractor(s), or proposed subcontractor(s), and such individual(s), contractor(s) or  
9 subcontractor(s) shall be subject to approval by EPA in accordance with the terms of Paragraphs  
10 86 and 87, above. The naming of any replacement(s) by Respondents shall not extend any  
11 deadlines required by this Order nor relieve the Respondents of any of their obligations to  
12 perform the Work required by this Order.

13 89. Respondents will notify EPA of any and all field activities at least seventy-two  
14 (72) hours before initiating them so that EPA may adequately schedule oversight tasks.

15 90. Respondents shall submit to EPA a certification that Respondents or their  
16 contractor(s) and subcontractor(s) have adequate insurance coverage or other ability, subject to  
17 approval of EPA, to compensate for liabilities for injuries or damages to persons or property that  
18 may result from the activities to be conducted by or on behalf of Respondents pursuant to this  
19 Order. Adequate insurance shall include comprehensive general liability insurance and  
20 automobile insurance with limits of one million dollars, combined single limit. If the  
21 Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor  
22 maintains insurance equivalent to that described above, or insurance covering the same risks but  
23 in a lesser amount, then the Respondents need provide only that portion of the insurance

described above that is not maintained by such contractor or subcontractor. Respondents shall ensure that such insurance or indemnification is maintained for the duration of performance of the Work required by this Order. Respondents shall ensure that the United States is named as an additional insured on any such insurance policies.

C. General Provisions

91. All Work required by this Order shall be conducted in accordance with: CERCLA; the NCP; EPA Region 9 "Guidance for Preparing Quality Assurance Project Plans for Superfund Remedial Projects" (EPA, November 1992); any final amended or superseding versions of such documents provided by EPA; other applicable EPA guidance documents; any Work Plan or individual components approved pursuant to Paragraph 84 of this Order; and any report, document or deliverable prepared by EPA because Respondents failed to comply with this Order.

92. All plans, schedules, and other reports that require EPA's approval and are required to be submitted by the Respondents pursuant to this Order shall, after approval by EPA, be incorporated into and be enforceable under this Order.

93. EPA will oversee Respondents's activities. Respondents will support EPA's initiation and implementation of activities needed to carry out its oversight responsibilities. Respondents also shall cooperate and coordinate the performance of all Work required to be performed under this Order with all other work being performed at the Property, including work performed by EPA, the State, or any other party performing work at the Property with the approval of EPA.

94. Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in

1 Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j).  
2 In accordance with 40 C.F.R. § 300.415(j), all on-Property actions required pursuant to this  
3 Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the  
4 situation, attain applicable or relevant and appropriate requirements under federal environmental  
5 or state environmental or facility siting laws.

6 **X. NOTICE OF INTENT TO COMPLY**

7 95. Respondents shall provide written notice to EPA of Respondents' irrevocable  
8 intent to comply with this Order. Such notice shall be due **no later than 5pm (PST) on**  
9 **December 19, 2005**. Failure to respond, or failure to provide notice of intent to comply with this  
10 Order, shall be deemed a refusal to comply with this Order.

11 **XI. OPPORTUNITY TO CONFER**

12 96. Respondents requested a conference with the counsel for EPA and the Section  
13 Chief of the Superfund Division Site Cleanup Section I, or whomever the Section Chief  
14 designated as her representative. The conference was held on December 6, 2005 at the San  
15 Francisco offices of Latham & Watkins. Because this Order is being amended to address  
16 suggestions regarding the Work which were proposed by Respondents in the December 6, 2005  
17 conference, EPA is not providing an opportunity for a conference on this amended Order.

18 97. The purpose and scope of the conference held pursuant to this Order was limited  
19 to issues involving the implementation of the Response Actions required by this Order and the  
20 extent to which Respondents intended to comply with this Order. In the conference, the  
21 Respondents had the opportunity to present any evidence, arguments or comments regarding this

1 Order, its applicability, any factual determinations on which the Order was based, the  
2 appropriateness of any action that the Respondents were ordered to take, or any other relevant  
3 and material issue. Any such evidence, arguments or comments should be reduced to writing and  
4 submitted to EPA on or before December 21, 2005. The conference is not an evidentiary  
5 hearing, and does not constitute a proceeding to challenge this Order. It does not give  
6 Respondents a right to seek review of this Order, or to seek resolution of potential liability, and  
7 no official record of the conference will be made.

8 98. Respondents are hereby placed on notice that EPA will take any action that may  
9 be necessary in the opinion of EPA for the protection of public health and welfare and the  
10 environment, and Respondents may be liable for the costs of those actions under Section 107(a)  
11 of CERCLA, 42 U.S.C. § 9607(a).

## 12 **XII. ENDANGERMENT AND EMERGENCY RESPONSE**

13 99. In the event of any action or occurrence during the performance of the Work that  
14 causes or threatens to cause a release of a hazardous substance or that may present an immediate  
15 threat to public health or welfare or the environment, Respondents shall immediately take all  
16 appropriate action(s) to prevent, abate, or minimize the threat, and shall immediately notify  
17 EPA's primary OSC, or, if the primary OSC is unavailable, EPA's alternate OSC, as designated  
18 below in Paragraph 106. If neither of these persons is available, Respondents shall notify the  
19 EPA Emergency Response Unit, Region 9, by calling (800) 300-2193. Respondents shall take  
20 such action(s) in consultation with EPA's OSC and in accordance with all applicable provisions  
21 of this Order, including but not limited to the approved Health and Safety Plan.

1           100. Nothing in the preceding Paragraph shall be deemed to limit any authority of the  
2 United States to take, direct, or order all appropriate action to protect human health and the  
3 environment or to prevent, abate, or minimize an actual or threatened release of hazardous  
4 substances at or from the Property.

### 5                           **XIII. MODIFICATION OF WORK REQUIRED**

6           101. In the event of unanticipated or changed circumstances at the Property,  
7 Respondents shall notify the EPA OSC by telephone within twenty-four (24) hours of discovery  
8 of the unanticipated or changed circumstances. This verbal notification shall be followed by  
9 written notification postmarked no later than within three (3) days of discovery of the  
10 unanticipated or changed circumstances.

11           102. The EPA Superfund Division Branch Chief may determine that in addition to  
12 tasks addressed herein, additional work may be required to address the unanticipated or changed  
13 circumstances. In accordance with Section 106(a) of CERCLA, the Branch Chief may direct, as  
14 an amendment to this Order, that Respondents perform these tasks in addition to those required  
15 herein. Respondents shall implement the additional tasks that the Branch Chief identifies. The  
16 additional work shall be completed according to the standards, specifications, and schedules set  
17 forth by the Branch Chief in any modifications to this Order.

### 18                           **XIV. DESIGNATED PROJECT MANAGERS**

19           103. EPA designates Susan Keydel, an employee of EPA Region 9, as its primary OSC  
20 and designated representative, who shall have the authorities, duties, and responsibilities vested  
21 in the OSC by the NCP. This includes, but is not limited to, the authority to halt, modify,



1 conduct, or direct any tasks required by this Order or undertake the Response Actions (or  
2 portions of the Response Actions) when conditions at the Property present or may present a  
3 threat to public health or welfare or the environment as set forth in the NCP. **On or before**  
4 **January 13, 2006**, Respondents shall designate a Project Coordinator who shall be responsible  
5 for overseeing Respondents' implementation of this Order. To the maximum extent possible, all  
6 oral communications between Respondents and EPA concerning the activities performed  
7 pursuant to this Order shall be directed through EPA's OSC and Respondents' Project  
8 Coordinator. All documents, including progress and technical reports, approvals, and other  
9 correspondence concerning the activities performed pursuant to the terms and conditions of this  
10 Order, shall be delivered in accordance with Paragraph 83, above.

11 104. EPA and Respondents may change their respective OSC and Project Coordinator.  
12 Notification of such a change shall be made by notifying the other party in writing at least five  
13 (5) days prior to the change, except in the case of an emergency, in which case notification shall  
14 be made orally followed by written notification as soon as is practicable.

15 105. Consistent with the provisions of this Order, the EPA designates Jeff Dhont as an  
16 alternate OSC, in the event Susan Keydel is unavailable. During such times, Jeff Dhont shall  
17 have the authority vested in the OSC by the NCP, as set forth in Paragraph 104 above.

18 106. The absence of the EPA OSC from the Property shall not be cause for the  
19 stoppage of work. Nothing in this Order shall limit the authority of the EPA OSC under federal  
20 law.

1                                   **XV. ACCESS**

2           107. Respondents shall permit EPA and its authorized representatives, including its  
3 contractors and the State, to have access at all times to the Property to monitor any activity  
4 conducted pursuant to this Order and to conduct such tests or investigations as EPA deems  
5 necessary. Nothing in this Order shall be deemed a limit on EPA's authority under federal law to  
6 gain access to the Property.

7           108. To the extent that Respondents require access to property other than property that  
8 they own to carry out the terms of this Order, Respondents shall, within a reasonable time to  
9 implement the requirements of this Order, obtain access for: EPA, its contractors, oversight  
10 officials, and other authorized representatives; state oversight officials or contractors; and  
11 Respondents and their authorized representatives. If Respondents fail to gain access within the  
12 time period necessary to implement the requirements of this Order, Respondents shall continue to  
13 use best efforts to obtain access until access is granted. For purposes of this Paragraph, "best  
14 efforts" include, but are not limited to, the payment of money as consideration for access. If  
15 access is not provided within the time referenced above, EPA may obtain access under Sections  
16 104(e) or 106(a) of CERCLA and recover any costs incurred pursuant to Section XX of this  
17 Order.

18                                   **XVI. ADMINISTRATIVE RECORD**

19           109. The Administrative Record supporting EPA's November 2, 2005 Action  
20 Memorandum is available for review at the U.S. EPA Region 9 Superfund Records Center, 95  
21 Hawthorne Street, San Francisco, California during normal business hours.

## **XVII. DELAY IN PERFORMANCE**

110. Any delay in the performance of any requirement of this Order that, in the EPA's sole judgment and discretion, is not properly justified by Respondents under the terms of this Section shall be considered a violation of this Order. Any delay in performance of any requirement of this Order shall not affect any other obligation of Respondents under the terms and conditions of this Order.

111. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's primary OSC within twenty-four (24) hours after Respondents first know or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not justifications for any delay in performance.

112. If Respondents are unable to perform any activity or submit any document within the time required under this Order, the Respondents may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect or extend the time to perform any of Respondents' obligations under this Order.

1           113. If EPA determines that good cause exists for an extension of time, it may grant a  
2 request made by Respondents pursuant to Paragraph 112 above, and specify in writing to the  
3 Respondents the new schedule for completion of the activity or submission of the document for  
4 which the extension was requested.

### 5                           **XVIII. RECORD PRESERVATION**

6           114. Respondents shall maintain, during the pendency of this Order, and for a  
7 minimum of five (5) years after EPA provides notice to Respondents that the Work has been  
8 completed, a repository of the records and documents required to be prepared under this Order.  
9 In addition, Respondents shall retain copies of the most recent version of all documents that  
10 relate to hazardous substances at the Property and that are in their possession or in the possession  
11 of their employees, agents, contractors, or attorneys. After this five-year period, Respondents  
12 shall notify EPA at least thirty (30) days before the documents are scheduled to be destroyed. If  
13 EPA so requests, Respondents shall provide these documents to EPA.

### 14                           **XIX. ENFORCEMENT AND RESERVATIONS**

15           115. EPA reserves the right to bring an action against Respondents under Section 107  
16 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States  
17 related to this Order or otherwise incurred with respect to implementation and/or oversight of the  
18 Response Actions required by this Order and not reimbursed by Respondents. This reservation  
19 shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight,  
20 and the costs of compiling the cost documentation to support oversight costs, as well as accrued  
21 interest as provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

1           116. Notwithstanding any other provision of this Order, at any time during the  
2       Response Action, EPA may perform its own studies, complete the Work and Response Actions  
3       (or any portion of the Response Actions) and seek reimbursement from Respondents for its costs,  
4       or seek any other appropriate relief. Should EPA seek to perform any or all of the Work (as  
5       defined in Paragraph 7 of this Order), Respondents, individually and collectively, are prohibited  
6       by this Order from submitting a bid or bids to conduct Work under contract to EPA (or under a  
7       subcontract to EPA's prime contractor) if EPA seeks to competitively bid all or portions of the  
8       Work.

9           117. Nothing in this Order shall preclude EPA from taking any additional enforcement  
10      action, including modification of this Order or issuance of additional Orders, or additional  
11      remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the  
12      future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9606 and/or § 9607(a),  
13      et seq., or any other applicable law. Respondents may be liable under CERCLA Section 107(a)  
14      for the costs of any such additional actions.

15          118. Notwithstanding any provision of this Order, the United States hereby retains all  
16      of its information gathering, inspection and enforcement authorities and rights under CERCLA,  
17      the Resource Conservation and Recovery Act, or any other applicable statutes or regulations.

18          119. Notwithstanding compliance with the terms of this Order, including the  
19      completion of the EPA-approved Response Action, Respondents are not released from liability,  
20      if any, for any enforcement actions beyond the terms of this Order taken by EPA.

21          120. EPA reserves the right to take any enforcement action pursuant to CERCLA or  
22      any other legal authority, including the right to seek injunctive relief, monetary penalties, reim-  
23      bursement of response costs, and punitive damages for any violation of law or this Order.

121. EPA expressly reserves all rights and defenses that it may have, including EPA's right both to disapprove of work performed by Respondents and to request the Respondents to perform tasks in addition to those detailed in Section IX of this Order.

122. This Order does not release Respondents from any claim, cause of action or demand in law or equity, including, but not limited to, any claim, cause of action, or demand that lawfully may be asserted by representatives of the United States or the State.

123. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondents will be construed as relieving Respondents of their obligation to obtain such formal approval as may be required by this Order:

## **XX. REIMBURSEMENT OF OVERSIGHT COSTS**

124. Respondents shall reimburse EPA, on written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Respondents shall, within thirty (30) days of receipt of the bill, remit by cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Region 9 Superfund  
P.O. Box 371099M  
Pittsburgh, PA 15251

Respondents shall send a cover letter with any check and the letter shall identify the Montrose Superfund Site (0926) - 20846 Normandie Avenue Removal Action by name and make reference

1 to this Order, including the EPA docket number stated above. Respondents shall send  
2 notification of any amount paid, including a photocopy of the check, simultaneously to EPA (to  
3 the attention of John Lyons, Office of Regional Counsel).

4 125. Interest at the rate established under Section 107(a) of CERCLA shall begin to  
5 accrue on the unpaid balance from the due date of the original demand, notwithstanding any  
6 objection to any portion of the costs.

#### 7 **XXI. SEVERABILITY**

8 126. If any provision or authority of this Order or the application of this Order to any  
9 circumstance is held by a court to be invalid, the application of such provision to other  
10 circumstances and the remainder of this Order shall not be affected thereby, and the remainder of  
11 this Order shall remain in force.

#### 12 **XXII. DISCLAIMER**

13 127. The United States, by issuance of this Order, assumes no liability for any injuries  
14 or damages to persons or property resulting from acts or omissions by Respondents, or their  
15 employees, agents, successors, assigns, contractors, or consultants in carrying out any action or  
16 activity pursuant to this Order. Neither EPA nor the United States shall be held as a party to any  
17 contract entered into by Respondents, or their employees, agents, successors, assigns, contractors,  
18 or consultants in carrying out any action or activity pursuant to this Order. This Order does not  
19 constitute a pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C.  
20 § 9611(a)(2).

1 **XXIII. PENALTIES FOR NONCOMPLIANCE**

2 128. Respondents are advised pursuant to Section 106(b) of CERCLA, 42 U.S.C.  
3 § 9606(b), that violation of this Order or subsequent failure or refusal to comply with this Order,  
4 or any portion thereof, may subject Respondents to a civil penalty of up to \$32,500 per day for  
5 each day in which such violation occurs, or such failure to comply continues. Failure to comply  
6 with this Order, or any portion thereof, also may subject Respondents to liability for punitive  
7 damages in an amount three times the amount of any cost incurred by the government as a result  
8 of the failure of Respondents to take proper action, pursuant to Section 107(c)(3) of CERCLA,  
9 42 U.S.C. § 9607(c)(3).

10 **XXIV. TERMINATION AND SATISFACTION**

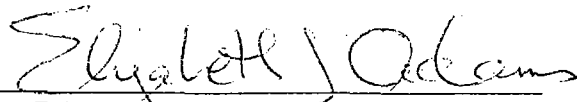
11 129. The provisions of this Order shall be deemed satisfied on Respondents' receipt of  
12 written notice from EPA that Respondents have demonstrated to the satisfaction of EPA that all  
13 of the terms of this Order, including any additional tasks that EPA has determined to be  
14 necessary, have been completed.

15 **Unilateral Administrative Order 09-2006-02A**

16 IT IS SO ORDERED:

17 UNITED STATES  
18 ENVIRONMENTAL PROTECTION AGENCY

19 By:



20 Elizabeth J. Adams  
21 Chief, Site Cleanup Branch, Superfund Division  
22 EPA, Region 9

Date:

December 15, 2005



EPA Region 9 Contacts:

Primary OSC

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ATTACHMENT A: U.S. EPA REGION 9, CERCLA REMOVAL ACTION MEMORANDUM  
DATED NOVEMBER 2, 2005.